

BEFORE THE  
ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF:

ILLINOIS COMMERCE COMMISSION

# On Its Own Motion

V

No. 02-0461

RESOURCE TECHNOLOGY CORPORATION)

Citation to show cause for

continued QSWEF Certification

of Pontiac facility and to

investigate compliance with the)

final order in Dockets 97-0031 )

through 97-0045 Consolidated. )

Chicago, Illinois

June 14th, 2006

Met pursuant to notice at 10:00 a.m.

BEFORE :

MR. TERRANCE HILLIARD, Administrative Law Judge.

APPEARANCES :

MR. JOHN C. FEELEY,

160 North LaSalle Street,

Chicago, Illinois 60601,

appeared for Staff of the

Illinois Commerce Commission;

1

2 APPEARANCES: (Cont'd.)

3

4 MR. JAMES D. NEWBOLD,  
5 Assistant Attorney General,  
6 100 West Wacker Drive,  
7 Chicago, Illinois  
8 appeared for the State of Illinois  
9 in the RTC bankruptcy matter;

7

8 ARNSTEIN & LEHR, L.L.P., by  
9 MR. BARRY A. CHATZ,  
10 120 South Riverside Plaza,  
11 Chicago, Illinois 60606,  
12 appeared for Jay Steinberg, not individually  
13 but solely as Chapter 7 trustee of Resource  
14 Technology Corporation;

11

12 GOULD & RATNER, by  
13 MR. LOUIS D. BERNSTEIN,  
14 222 North LaSalle Street,  
15 Chicago, Illinois 60601,  
16 appeared for John Connolly and  
17 Pre-petition Debtor, RTC.

15

16

17

18

19

20

21

22 SULLIVAN REPORTING COMPANY, by  
Teresann B. Giorgi, CSR

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22

I N D E X

Witnesses:

EXAMINATION

Jay Steinberg	138
	145
John Connolly	150

E X H I B I T S

STAFF'S

For Identification

In Evidence

5	----	149
---	------	-----

1 JUDGE HILLIARD: On behalf of the Illinois  
2 Commerce Commission, I call Docket 02-0461, the  
3 Illinois Commerce Commission versus Resource  
4 Technology Corporation.

5 Can the parties, beginning with  
6 Mr. Feeley, identify themselves for the record,  
7 please.

8 MR. FEELEY: Representing Staff of the Illinois  
9 Commerce Commission, John C. Feeley, Office of  
10 General Counsel, Illinois Commerce Commission, 160  
11 North LaSalle Street, Suite C-800.

12 MR. NEWBOLD: James Newbold, Assistant Attorney  
13 General, I'm representing the State in the RTC  
14 bankruptcy matter.

15 MR. CHATZ: My name is Barry Chatz, Arnstein &  
16 Lehr, L.L.P., 120 South Riverside, Suite 1200,  
17 Chicago, Illinois. I represent Jay Steinberg, not  
18 individually, but solely in his representative  
19 capacity as Chapter 7 Trustee of the Estate  
20 of Resource Technology, Case No. 99 B 35434, also  
21 here is Mr. Steinberg.

22 MR. BERSTEIN: Good morning, your Honor. Louis

1 Bernstein from Gould & Ratner on behalf of John  
2 Connolly. Mr. Connolly is also here and he is the  
3 president of RTC and the president of the  
4 pre-petition debtor RTC.

5 JUDGE HILLIARD: Okay. You're the movant here,  
6 I think, aren't you.

7 MR. BERNSTEIN: Yeah. Can I make a suggestion?

8 JUDGE HILLIARD: Sure.

9 MR. BERNSTEIN: The issue really here is a  
10 bankruptcy issue as to whether or not -- John and I  
11 have talked. I think it makes some sense to get it  
12 all on paper, in briefs, because it's really a legal  
13 issue based on case law. And I would propose that  
14 we put it in briefs and you have the opportunity to  
15 read the cases, see what each side says and then  
16 determine if RTC can -- if they can get an extension  
17 of time to be represented. That is the issue.

18 MR. FEELEY: If I can respond.

19 JUDGE HILLIARD: What's your position, John?

20 MR. FEELEY: I think there's some facts that we  
21 need to establish here. We've asked the trustee to  
22 be present, and Mr. Connolly, and they're here. I

1 think we have some questions that we would like to  
2 ask the trustee and Mr. Connolly. Then, we can move  
3 on to what Mr. Bernstein mentions. We think clearly  
4 as long as this matter, as a bankruptcy, is still  
5 ongoing, that only the Chapter 7 trustee can  
6 represent them. But we have the trustee here and  
7 Mr. Connolly, we'd like to ask them some questions  
8 under oath.

9 MR. CHATZ: If I could just state the trustee's  
10 position in this matter, for the record, and if your  
11 Honor wishes to take Mr. Steinberg's testimony, I  
12 think he would state as follows: On or about  
13 March 18th, 2005 -- excuse me, 2006, the Bankruptcy  
14 Court granted the motion of the trustee to abandon  
15 the estate's right, title and interest in any  
16 permits for operations of the RTC sites. Those  
17 sites meaning the sites in Illinois and the sites in  
18 Michigan.

19 On March 28th, the 10th day after  
20 that, and there were no appeals filed as to his  
21 abandonment, the trustee, terminated all of the  
22 bankruptcy estate's operations at those sites. The

1 trustee has not been operating any sites since that  
2 time and has no business operations other than  
3 the -- at all, the only actions that the trustee is  
4 taking at this time is concluding litigation matters  
5 and wrapping up this estate.

6 JUDGE HILLIARD: Mr. Attorney General, do you  
7 have any comments you want to make?

8 MR. NEWBOLD: Yes. I would like to inquire of  
9 Mr. Chatz what permits he says were abandoned? I  
10 understand the only permit was an Illinois EPA  
11 permit for that site.

12 If you could clarify that.

13 MR. CHATZ: I do not know if I have a list of  
14 the permits that were abandoned with me. However,  
15 the trustee -- the trustee is not operating any  
16 sites at this point in time and is not acting under  
17 any permits at this time.

18 MR. NEWBOLD: I believe the real question here  
19 is whether the trustee is authorizing anyone else to  
20 appear in this matter. He's the trustee of RTC.  
21 Most of what happened here -- most of the  
22 allegations that serve -- underlie this proceeding,

1 have to do with the use of natural gas at Pontiac  
2 during the bankruptcy, not prior to the bankruptcy.  
3 There is something that the estate did. It was not  
4 Mr. Steinberg. It was the estate.

5 JUDGE HILLIARD: Okay.

6 MR. BERNSTEIN: And that is the fact issue,  
7 actually.

8 MR. NEWBOLD: I would like to know if  
9 Mr. Steinberg has authorized anyone else to appear  
10 and defend this matter.

11 JUDGE HILLIARD: Okay. I'm going to let you say  
12 what you have to say and then, I think, we're going  
13 to -- probably the easiest way to do this is to  
14 swear Mr. Steinberg and he can answer your  
15 questions.

16 Go ahead, Mr. Bernstein.

17 MR. BERNSTEIN: That is the exact issue, whether  
18 Mr. Steinberg did or did not authorize anyone.  
19 There is a case right on point dealing with the  
20 trustee to abandon an asset in Bankruptcy Court,  
21 Chapter 7 trustee. The party who was affected was  
22 the insurance company here. They were the ones who



1 were going to have to pay. They then filed a motion  
2 with the court, Bankruptcy Court, seeking authority  
3 to use the corporate debtor's name, because they  
4 were the ones affected, not the trustee. The  
5 trustee didn't care anymore. The same way here.  
6 Mr. Connolly as the president of RTC, as the  
7 pre-petition debtor, does care. And he would like  
8 an opportunity to present evidence in this case.

9 I don't even know what the facts of  
10 this case are. I represent Mr. Connolly and have  
11 so -- done so for a year and a half in the  
12 Bankruptcy Court. But there is authority to do what  
13 he is asking to do. That's why I thought the briefs  
14 would be important.

15 JUDGE HILLIARD: I think that Mr. Feeley's point  
16 was that he wants to elicit certain facts before we  
17 get onto the legal argument. So, I would ask the  
18 trustee and Mr. Connolly to raise their hands and be  
19 sworn.

20 (Witnesses sworn.)

21 JUDGE HILLIARD: Go ahead, Mr. Feeley.

22

1 JAY STEINBERG,  
2 called as a witness herein, and after having been  
3 first duly sworn, was examined and testified as  
4 follows:

5 EXAMINATION

6 BY

7 MR. FEELEY:

8 Q Mr. Steinberg, what is your role as trustee  
9 for RTC?

10 A I am the Chapter 7 trustee, having been  
11 appointed when the case was converted from a  
12 Chapter 11 to a Chapter 7 and I serve in that  
13 capacity still.

14 Q Do you recall when you were appointed  
15 Chapter 7 trustee?

16 A September 25th, I believe, of '05.

17 Q What is the bankruptcy rule for a trustee  
18 operating a business?

19 MR. CHATZ: You know, I ask that you ask him  
20 questions of fact, not legal questions. He operates  
21 the --

22 JUDGE HILLIARD: Sustained. Sustained.

1       MR. FEELEY:   Q   While RTC has been in Chapter 7  
2   you've been operating it as a business, correct?

3       A       Pursuant to order of Court, the Chapter 7  
4   bankruptcy estate was authorized to continue to  
5   operate the debtor business.

6       Q       Okay.  Have you sold any property of the  
7   debtor?

8       A       The assets at Hillside were sold to DTE  
9   Biomaster (sic), I believe the name is --

10      MR. BERNSTEIN:  B-i-o-m-a-s-s.

11      THE WITNESS:  Biomass, right.

12                   -- pursuant to an order of Court.

13                   The only other things that were  
14   conveyed, pursuant to a settlement approved by  
15   Judge Wedoff in bankruptcy proceeding, all of the  
16   tangible assets of RTC were conveyed to Scatter  
17   Corporation or Chip Lease, Inc.

18      MR. FEELEY:  Q   While you operated RTC as a  
19   business, did you have any employees?

20      A       Well, I didn't operate.  While the  
21   Chapter 7 bankruptcy estate was operating it there  
22   were employees.  They were basically the same

1 employees that were there before I was appointed.

2 Q And when was the sale closed between the  
3 estate and Chip Lease and/or Scatter Corp.?

4 A The order, which was dated -- I've got a  
5 copy of it here. The order, which was dated  
6 March 16th, stated that the transaction was deemed  
7 effective including the abandonment of the permits  
8 when there's a final non-appealable order, and that  
9 would have been March 28th of '06.

10 MR. CHATZ: However, the actual closing of the  
11 sale transaction, not with retrospect to the  
12 abandonment of the permits, was on or around  
13 May 9th, 2006.

14 MR. FEELEY: Q So, as Chapter 7 trustee you've  
15 ceased operating the business of RTC, correct?

16 A On March 28th. The permits were deemed  
17 abandoned on that date.

18 Q While you, as the trustee, were operating  
19 RTC as a business, was Mr. Connolly an employee?

20 A Mr. Connolly was an employee of the  
21 Chapter 7 bankruptcy estate.

22 Q And are any of those employees still

1 working for the Chapter 7 trustee?

2 A No. As of March 28th of '06, while the  
3 permits were deemed abandoned, the estate ceased all  
4 operations. And the last payroll that was made by  
5 the estate was through the period of March 28th,  
6 '06.

7 Q So, Mr. Connolly was terminated then?

8 A I can't say he was terminated. He is no  
9 longer an employee of the Chapter 7 bankruptcy  
10 estate.

11 Q And with regards to this matter, as trustee  
12 you had counsel take over the defense of the estate  
13 of this matter here before the ICC, correct?

14 A Early in the case, RTC, I assume, was under  
15 Mr. Szilagyi's Chapter 11 trusteeship, was  
16 defending. When it became a Chapter 7, the estate  
17 asked the courts to approve Mr. Chatz as counsel. I  
18 believe he substituted the then current attorney  
19 which, I think, was Mr. Curley.

20 MR. CHATZ: Correct.

21 THE WITNESS: And he's been in it since then.

22 MR. FEELEY: Q And you directed Mr. Chatz to

1 withdraw his appearance and your appearance in this  
2 matter, correct, as Chapter 7 trustee?

3 MR. CHATZ: I think you're asking for a legal  
4 conclusion once again. I withdrew my appearance  
5 when we had no interest in these assets, subject to  
6 the judge's approval.

7 MR. FEELEY: Q And your appearance has, also,  
8 been withdrawn, correct?

9 A I'm not sure I appeared. I think I  
10 appeared through counsel. I'm not sure I personally  
11 appeared.

12 Q Have you as the Chapter 7 trustee  
13 authorized Mr. Connolly or anyone else to defend  
14 this action?

15 A The only appearance was through Mr. Chatz  
16 and since he has withdrawn, the estate, technically,  
17 is not part of the hearing.

18 JUDGE HILLIARD: He asked you whether or not you  
19 authorized Mr. Connolly.

20 THE WITNESS: No.

21 JUDGE HILLIARD: The answer is no?

22 THE WITNESS: No.

1 MR. FEELEY: Q And no one else?

2 A Correct.

3 Q With regards to the assets of Pontiac, I

4 think you've mentioned this, those were sold to Chip

5 Lease and/or Scatter Corp.?

6 A The assets were conveyed as part of the

7 settlement.

8 Q And they were conveyed to Chip Lease and/or

9 Scatter Corp.?

10 A One or the other. I can't tell you for

11 sure which one it was. Certain ones went to one.

12 Certain ones went to the other.

13 Q And which of those assets at Pontiac were

14 conveyed?

15 A I don't recall. I think you're asking if I

16 can differentiate which assets went where and at

17 this point I can't. It was one or the other.

18 Q But operating assets were conveyed to Chip

19 Lease and/or Scatter, correct?

20 A One of the two. Correct.

21 Q Is the bankruptcy matter concluded, yet?

22 A No.

1       Q       Are you aware of any court ruling for an  
2 existing contract at Pontiac between RTC and Allied  
3 Waste that would allow RTC to continue operating  
4 assets?

5       A       I don't understand the question.

6       MR. CHATZ: I think you're, once again, asking  
7 for a legal conclusion regarding court ruling. I  
8 object to the question.

9       MR. FEELEY: Q Are you aware of any court  
10 ruling in the bankruptcy matter that deals with a  
11 contract between RTC and Allied Waste?

12      A       The only matter that has come up is -- was  
13 at hearing yesterday in front of Judge Wedoff on a  
14 motion to compel the trustee to assume and assign  
15 various contracts. One of them was involving  
16 Allied. And the court did not compel the trustee to  
17 assume and assign.

18                   In other words, they were seeking to  
19 compel me to file a motion to assume and assign and  
20 the court did not compel me.

21      JUDGE HILLIARD: But it did rule.

22      THE WITNESS: It ruled that I couldn't be



1 compelled.

2 JUDGE HILLIARD: Okay.

3 THE WITNESS: It was a limited matter in front  
4 of the judge.

5 EXAMINATION

6 BY

7 MR. NEWBOLD:

8 Q Mr. Steinberg, do you recall a stated --  
9 the court stated basis for the ruling?

10 A There's an order being submitted and we'll  
11 find out today. There's some disagreement as to  
12 what the judge ruled exactly.

13 MR. FEELEY: One second.

14 (Short pause.)

15 MR. NEWBOLD: Q Do you have a copy of the  
16 settlement agreement that would indicate what  
17 permits were abandoned?

18 A All I have is the order. I should have  
19 brought the whole thing. Mr. Chatz may have it.  
20 The agreement was an exhibit to the order.  
21 Mr. Chatz may have it.

22 MR. CHATZ: You want to know which assets went

1 where?

2 MR. NEWBOLD: Statements concerning -- not only  
3 if there's testimony concerning the sale of assets,  
4 but the abandoned permits. I would like to know  
5 what permits are provided for in the settlement  
6 agreement.

7 THE WITNESS: The order just says "permits."  
8 That's a fine term, but I can't find --

9 MR. CHATZ: I'm looking, and I apologize, but  
10 I'm looking at the settlement agreement, as well, it  
11 speaks to the abandonment of permits and it states,  
12 The estate shall seek court approval for the  
13 abandonment of permits, without delineating which  
14 ones. And I don't believe any exhibits delineated  
15 which ones. And I believe in the order,  
16 Paragraph 19, does not delineate which permits were  
17 abandoned.

18 So, I would presume, though I don't  
19 like to, that any and all permits were abandoned.

20 THE WITNESS: That would be the intent.

21 JUDGE HILLIARD: Just to clarify.

22 Mr. Steinberg, as the trustee, was your intent to

1 abandon all permits?

2 THE WITNESS: Yes, your Honor.

3 JUDGE HILLIARD: All right.

4 MR. FEELEY: Thank you, Mr. Steinberg. Those

5 are all the questions that Staff has for you.

6 Subject to whether you have any

7 questions for Mr. Steinberg, we have just a few for

8 Mr. Connolly.

9 (Witness excused.)

10 JUDGE HILLIARD: Do you want to leave now and

11 come back or do you want to keep going?

12 MR. STEINBERG: We want to hear what the judge

13 rules. Yes, we want to get there today.

14 MR. NEWBOLD: I know that these two gentlemen

15 have to be there and I need to be there, too.

16 MR. BERNSTEIN: I have no objection. I have no

17 questions for Mr. Steinberg.

18 MR. NEWBOLD: Can we be excused, your Honor?

19 JUDGE HILLIARD: Yes.

20 Can we continue, then? Do you have

21 any objection to --

22 MR. NEWBOLD: Absolutely not.

1                   I would like to -- Mr. Bernstein, we  
2 would like to have the settlement agreement entered  
3 into evidence here. Can we agree on that and by  
4 agreement can we submit that to the judge?

5       MR. BERNSTEIN: No objection.

6       JUDGE HILLIARD: Then, the settlement agreement  
7 will be marked Staff Exhibit No. 1 -- or what  
8 exhibit do you want to call it?

9       MR. FEELEY: Can we do it out of order?

10      JUDGE HILLIARD: Sure.

11      MR. CHATZ: I think what the best document would  
12 be your Honor, is the order approving the  
13 settlement, which then attaches the agreement and  
14 all the exhibits to it. If you need me to get you a  
15 copy, I'll do that.

16      MR. FEELEY: We've already premarked 1 through  
17 4. So, can we mark it as 5?

18      JUDGE HILLIARD: Yes.

19                   Is that the order March 28th?

20      THE WITNESS: March 16th.

21      JUDGE HILLIARD: The order will be admitted. It  
22 will be marked Staff's Exhibit No. 5.

1 (Whereupon, Staff's Exhibit  
2 No. 5 was not marked at  
3 the hearing but was admitted  
4 in evidence.)  
5 JUDGE HILLIARD: You're excused.  
6 MR. NEWBOLD: Thank you.  
7 MR. CHATZ: Thank you.  
8 MR. FEELEY: Are we coming back?  
9 JUDGE HILLIARD: Apparently, you can keep going  
10 with Mr. Connolly, if you'd like.  
11 MR. FEELEY: Okay.  
12 JUDGE HILLIARD: There's no objection to Staff  
13 proceeding in your absence, is that right,  
14 gentlemen?  
15 MR. NEWBOLD: Correct.  
16 MR. CHATZ: Right.  
17 (Short pause.)  
18 JUDGE HILLIARD: Direct your examination.  
19 MR. FEELEY: Is Mr. Connolly sworn in?  
20 JUDGE HILLIARD: Yes, he is.  
21  
22

1 JOHN CONNOLLY,  
2 called as a witness herein, and after having been  
3 first duly sworn, was examined and testified as  
4 follows:

5 EXAMINATION

6 BY

7 MR. FEELEY:

8 Q Good morning, Mr. Connolly, my name is John  
9 Feeley. I represent the Staff of the Illinois  
10 Commerce Commission.

11 A Good morning.

12 Q Are you president of RTC?

13 A I am.

14 Q Who appointed you president of RTC?

15 A The Board of Directors did.

16 Q Board of Directors of RTC?

17 A Correct.

18 Q And who are the members of the Board of  
19 Directors that appointed you the president?

20 A At the time I was appointed I think it was  
21 Richard Nichols, Kevin Warner, Andrew Jahelka and  
22 George Calvert.

1       Q       And who are the current members of the  
2 Board of Directors of RTC? Are they the same  
3 people?

4       A       No. Mr. Calvert is not. Mr. Warner is  
5 not -- I believe he's not. I believe it's just  
6 Mr. Nichols and Mr. Jahelka and myself.

7       Q       You were present here while I asked  
8 Mr. Steinberg some questions, correct?

9       A       Correct.

10      Q       Do you have any reason to believe that any  
11 of Mr. Steinberg's testimony is not true?

12      A       No.

13      Q       Did Mr. Steinberg authorize you to file a  
14 motion to continue this hearing and for leave to  
15 appoint counsel?

16      A       Sorry, can you just repeat the question? I  
17 didn't hear one of the words.

18      Q       Did Mr. Steinberg authorize you to file the  
19 motion to continue the hearing and for leave to  
20 appoint counsel?

21      A       Can I see the motion, please --

22      Q       Sure.

1           A       -- to make sure I can answer the question?  
2                    Do you have a copy?  
3           MR. BERNSTEIN:   (Indicating).  
4           MR. FEELEY:   Q   Do you have in front of you a  
5 motion that was filed on June 2nd, 2006, entitled,  
6 Motion to Continue Hearing and for Leave to Appoint  
7 Counsel, that was filed by John Connolly, not  
8 individually but solely as president of Resource  
9 Technology Corp., by one of his attorneys?  
10          A       Yes, I have it in front of me.  
11          Q       Okay. Did Mr. Steinberg authorize you to  
12 file that motion?  
13          A       No.  
14          Q       Now, you said you're still president of  
15 RTC, correct?  
16          A       Correct.  
17          Q       Is RTC currently operating at Pontiac?  
18          A       Yes.  
19          Q       By "operating," is RTC selling electricity  
20 to Commonwealth Edison Company?  
21          A       Correct.  
22          MR. FEELEY:   Just one second, please.



1 (Short pause.)

2 MR. FEELEY: That's all the questions I have,

3 Mr. Connolly. Thank you.

4 JUDGE HILLIARD: Do you have any redirect?

5 MR. BERNSTEIN: No.

6 JUDGE HILLIARD: I don't have any questions for

7 you, Mr. Connolly.

8 MR. FEELEY: Should we go off the record?

9 JUDGE HILLIARD: Momentarily let's go off the

10 record.

11 (Whereupon, a discussion

12 was had off the record.)

13 JUDGE HILLIARD: Okay. Pursuant to a discussion

14 made off the record the briefing schedule on the

15 motion will be that the -- are you the attorney for

16 Mr. Connolly?

17 MR. BERNSTEIN: Yes, I am.

18 JUDGE HILLIARD: -- will file a brief in support

19 of their motion -- his motion, on or before the 28th

20 of June.

21 Staff will reply on or before

22 July 21 -- Staff will respond, I guess.

1                   Mr. Connolly's attorney will reply on  
2 or before 8/4.

3                   And we'll have a status on August 15th  
4 at 10:00 a.m.

5       MR. FEELEY: Mr. Bernstein, when you file, can  
6 you serve it electronically?

7       MR. BERNSTEIN: Yes.

8       JUDGE HILLIARD: Please send me a copy when you  
9 file.

10      MR. BERNSTEIN: Yes, Judge.

11      JUDGE HILLIARD: Either electronic or paper, I  
12 don't care, but make sure you give me a copy.

13                   All right. Is that all?

14      MR. BERNSTEIN: Yes.

15      JUDGE HILLIARD: See you again on the 15th.

16      MR. BERNSTEIN: Thank you very much, Judge.

17                               (Whereupon, the above-entitled  
18                               matter was continued to  
19                               August 15, 2006.)

20

21

22